CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, August 11, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:35 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the July 7, 2000, Commission Meeting.

The minutes of the July 7, 2000, Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. Commissioner Deaver seconded the motion. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #3. Consideration of the Opinion Request in the Matter of Lucas Advice letter – A-00-034 (O-00-157).

Staff Counsel Scott Tocher introduced the request for an opinion from Steve Lucas on behalf of his client Glenn Bystrom, former Deputy Director of the Board of Equalization (BOE), Sales and Use Tax Department. The request asked for an interpretation of when an individual actually participates within the meaning of the "revolving door" and "switching sides" bans against participation, after government employment, in decisions in which the government official participated while employed by the state.

Mr. Tocher explained that the advice given to Mr. Lucas by staff was that Mr. Bystrom had participated in audits conducted by the Board of Equalization while he served as Deputy Director at BOE. He noted that BOE conducts approximately 20,000 audits per year by auditors in the field offices, but that Mr. Bystrom did not have direct supervisory authority over the audits, and only participated in those audits that reach the Board for discussion (approximately 1% of the audits).

Steve Lucas explained that the concern revolved around the permanent ban on participation, and

not on the one year "revolving door" ban. He pointed out that the statute disqualifies the former official if the official participated "personally and substantially," and that the regulation interprets the statute to mean that supervisors are deemed to have participated personally and substantially if they supervised the proceeding. He argued that the regulation did not apply in Mr. Bystrom's case because Mr. Bystrom did not supervise the proceedings. He conceded that Mr. Bystrom should be disqualified from audit proceedings in which he was in any way involved while employed by the BOE.

Commissioner Scott asked Mr. Lucas how the Commission could monitor that participation.

Mr. Lucas responded that the statute and the regulation already provided a check through the "black letter" rule, disqualifying supervisors of proceedings permanently. He stated that, because the former official would be working with employees of the agency, those employees would have an interest in making sure that the official disqualified.

Commissioner Scott clarified that if the opinion is issued as drafted, state agencies needed to understand that the opinion would not override a situation where a conflict exists.

Commissioner Makel suggested that the statute could be reaffirmed.

Mr. Lucas agreed that it would be appropriate to outline that there are two ways the permanent ban can be triggered: the first would be through personal and substantial participation; and the second would be through the "deeming" provision of the regulation for supervisors.

Chairman Getman questioned whether the Commission should consider amending the regulation.

Mr. Lucas agreed, noting that the wording of the statute may be too broad.

Commissioner Scott commended Mr. Tocher on his work with the memo.

Commissioner Deaver motioned that staff prepare an opinion as drafted by Mr. Tocher, allowing Mr. Bystrom to participate except in those instances where Mr. Bystrom had personal and substantial involvement, and directed staff to research an amendment to the regulation. Commissioner Makel seconded the motion and it carried unanimously.

Item #4. Prenotice Discussion: "Offensive Use" of the Conflict of Interest Rules (Project "L").

Mr. Tocher introduced this project, explaining that situations had arisen where the conflict of interest rules had been used by certain individuals or groups to have a public official disqualified from participating in a decision when they know that the public official will stand in opposition to their position on an issue. Those situations involved the engineering of a disqualification by

becoming a source of income for the public official, usually by becoming a client or customer of the public official.

The difficulty, Mr. Tocher noted, is in determining whether and how often the conduct occurs, because an intentional effort on the part of the person or group to become a financial interest of the public official, is difficult to prove.

Commissioner Deaver disagreed, noting that if a person or group becomes a financial interest, and then contacts the public official's office to bring to their attention that the public official cannot participate in a decision because of that financial interest, the intent would be clear.

Mr. Tocher agreed that it was strong circumstantial evidence, but was not sure that it would be easy to prove. He noted that staff did not know how extensive the practice is, and suggested that the Commission could wait until after January 1, 2001, to see if the new thresholds for conflicts will discourage this practice, or pursue a statutory solution.

Commissioner Deaver responded that the Commission could also consider refusing to fine a public official when this situation arises. He suggested that the Commission should worry more about disclosure, and that it might be better to wait to see if the new thresholds make a difference. He noted that the new Public Education unit could help by letting the public know that the Commission will be giving consideration to those situations where it appears that the public official has been set up.

Commissioner Makel suggested that a partial solution would be to rescind a transaction and return any monies exchanged which caused the public official to become a financial interest.

Chairman Getman noted that a "rescind and return" option could create a loophole which might be abused, by allowing a public official to undo the financial interest in order to participate, only to become the financial interest again after the decision has been made.

Commissioner Deaver suggested that educating local government officials to be watching for these situations might help. He added that the media and the FPPC need to let the public know that this practice occurs.

Commissioner Swanson noted her concern that the Commission learns about the incidents after they have occurred. She suggested that something should be put in the regulations to preclude a person from engineering a financial interest to keep a public official from participating in a decision, or at least make clear that the practice is not acceptable.

Mr. Tocher gave an example of a situation where it would be difficult to prove that the financial interest was engineered. He pointed out that the challenge would be to develop a regulation that would prevent the engineering of a financial interest, while at the same time allow the public official and the businessperson to do business if it is necessary. He suggested that it could possibly be resolved through prosecutorial discretion.

Enforcement Chief Cy Rickards stated that each case would have to be looked at carefully, and that there would be certain clues to look for in each case. He agreed that the Commission needed

to be careful about writing a regulation or changing a statute to deal with this type of a discreet problem. He stated that it should be handled on a case-by-case basis unless it is discovered to happen frequently enough that it needs to be addressed statutorily.

Commissioner Deaver suggested that the Commission track the situation, educate the public, and use enforcement discretion to deal with the problem.

Mr. Rickards pointed out that the real problem is at the local level, with city attorneys learning about the possible engineering of a financial interest very close to a vote, but noted that public education may help those situations.

Chairman Getman noted her concern about that situation, because the city attorney would not be able to give the public official any options for dealing with the financial interest.

Mr. Rickards agreed, and suggested that the Commission could do outreach to determine the extent of the problem and to get input from the public about how to resolve the problem.

General Counsel Kathleen Gnekow advised the Commission that, if presented with a situation whereby the engineering of a financial interest occurred, the Legal staff would not currently be able to advise a public official that participation would be allowed because the conflict was engineered.

Commissioner Makel noted that the Enforcement Division would not have to prosecute those cases.

Commissioner Deaver pointed out that those situations would be after-the-fact, and suggested that an Interested Persons meeting might be a good idea to get input from the public.

Mr. Rickards stated that this situation would typically arise around issues where the public official's vote is crucial.

Chairman Getman agreed, and noted that a public official with the engineered financial interest would probably not participate in a decision because the financial interest exists. She stated that, even though it does not happen often and the Commission should not enact a regulation that is not needed, she finds these situations egregious and under the current law there is no way to stop it. She suggested that the Commission meet with the City Attorneys and CSAC to find a narrowly tailored circumstance where a public official can vote while the facts are investigated.

Commissioner Makel suggested the Commission consider the "rescind and return" option.

Mr. Rickards suggested that the Commission look at situations where the vote has already been taken and the manipulation to prevent a public official from participating worked.

Mr. Tocher noted that the Commission might meet with other groups to find a narrow remedy,

and noted that the remedy could be as simple as creating a regulation or rule which would simply state that it was not allowed.

Commissioner Deaver motioned that staff continue studying the issue, conduct Interested Persons meetings, consult the City Attorneys, CSAC, and other organizations for their input, and report back to the Commission with a recommendation. Commissioner Makel seconded the motion. There being no objection, the motion carried.

Item #5. Clarifying the Meaning of "Doing Business in the Jurisdiction" (Conflicts Project, Phase 2, Project N).

Natalie Bocanegra introduced the project, noting that the Act does not define "Doing business in the jurisdiction," but that the opinion *In re Baty* issued by the Commission in 1979, defined the phrase as "having business contacts with the jurisdiction." Since then, she stated, the term has been interpreted through advice letters on a case-by-case basis. Recently, she noted, questions involving marketing and internet activities have arisen and prompted a review of this term.

Ms. Bocanegra explained that legislative bill AB 2412 involves retailers located outside of the state of California who process orders electronically, and would require the retailer to collect taxes from the purchaser if the retailer is engaged in business in California. Under AB 2412, those out-of-state retailers are presumed to have an agent within the state, and therefore to be engaged in business in California, if that retailer maintains one of a specified number of ownership or sales relationships with a retailer located in California.

Ms. Bocanegra stated that AB 2412 recognizes a constitutional requirement of a nexus, based on a type of physical presence in the state, and that the physical presence nexus would not necessarily be implicated in the jurisdictional issues of the Political Reform Act. She also stated that the bill only contemplates retail sales, and the definition for "doing business in the jurisdiction" would be applied to many types of business activities, not just retail sales. The bill could provide guidance to the Commission with regard to retail sales, she noted.

Ms. Bocanegra reported that AB 2720 was drafted as a bill excluding certain types of campaign websites from the definition of "contribution," and the bill was redrafted to establish a California Commission on Internet Political Practices to examine a number of issues. She stated the bill recognizes the need for researching and developing rules addressing internet activities, however it is not clear whether the proposed commission will make recommendations involving the Project N jurisdictional issues before the FPPC.

Commissioner Deaver suggested that the bill's author could be asked to broaden the proposed commission's mandate.

Ms. Bocanegra reported that the California Chamber of Commerce states that the Chamber of Commerce is closely tracking internet legislation and is currently formulating a position on AB 2412. She noted that they have supported the Lampert bill, extending the moratorium on sales taxing on internet transactions. She also noted that the California Manufacturers Association has

supported the Lempert bill and that their concerns focus on taxing and privacy issues. Ms. Bocanegra explained that representatives indicated that both organizations are participating in ongoing and continuing discussions regarding these issues.

Chairman Getman suggested that this issue be discussed further during the legislative report. She also noted the need to decide the purpose of the term, "doing business in the jurisdiction," for the Political Reform Act. She suggested that the Commission might want a more narrow view of the term. She explained that a physical presence might be important because, if a public official is not going to be voting on anything that will affect a retailer, it may not make a difference that there is a connection.

Chairman Getman presented General Counsel Kathy Gnekow with a resolution from the Commission honoring her for her services as General Counsel.

The Commission adjourned for a break at 10:30 a.m. The meeting reconvened at 10:48 a.m.

Chairman Getman announced that the September meeting would be a two-day meeting, the first day devoted to a public hearing of the McPherson report recommendations. She stated that the McPherson Commission would be presenting the report, that there would be an opportunity for public comment, and that the Commission would decide whether to support any of the recommendations of the report. She noted that the McPherson Commission has asked the FPPC to go to the legislature with them on any recommendations the FPPC agrees with. The second day of the meeting will include the regular September agenda items.

Item #6. In the Matter of the City of Burbank, Bill Wiggins, Bob Kramer, Dave Golonski, Ted McConkey, Susan Spanos, and Stacey Murphy.

Staff Counsel Amy Holloway presented the proposed decision of the Administrative Law Judge Jaime Roman for the Commission to consider for adoption. She explained that the case pertains to three mass mailings sent by the City of Burbank through its City Council to people outside its jurisdiction. Ms. Holloway stated that the parties stipulated to the factual issues, and that the issue before the Commission was whether Government Code § 89001 applies to barring these types of mailings.

Ms. Holloway noted that staff contends that Government Code § 89001 does apply, and that the Administrative Law Judge ruled in favor of staff. She asked that the Commission adopt the decision in its entirety.

Ms. Holloway was not aware of any other case where there was an issue made of mailers sent to non-constituents.

Ms. Holloway noted that a prior version of Government Code § 89001 prohibited mass mailings within the public official's jurisdiction, but when Proposition 73 was adopted, Government Code § 89001 was amended to prohibit all mass mailings. Since the legislature has not modified that amendment, and the FPPC rejected an implementing regulation that would have included the

jurisdictional language, staff believes that § 89001 intended to include all mass mailings.

Ms. Holloway stated that the city of Burbank was making the argument that its mailings did not creat an incumbency advantage.

Commissioner Deaver noted that the issue was whether it is appropriate to use tax money for political purposes, and not who the constituents happen to be.

Commissioner Swanson observed that the city council was looking for political support for the airport.

Chairman Getman noted that there was specific evidence that the councilmembers used the fact that they had signed the letter individually, for political purposes within their community and to their constituents.

Ms. Holloway agreed, and argued that there was a political advantage to the city council in signing the letters. However, she noted that the content of the letter and the intent of the sender were irrelevant under the statute. The statute states, she continued, that public funds cannot be used to send a mass mailing which features public officials, and the letters mailed by the Burbank City Council violate that statute.

Commissioner Swanson noted that the fine amount was left unresolved by the ALJ.

Ms. Holloway stated that the fine issue was not addressed in the first hearing because, if the judge had not ruled in favor of the FPPC, there would have been no need to provide evidence regarding the fine. Once the judge ruled in favor of the FPPC, she noted, the parties stipulated to the fine, up to a maximum of $6,000. Ms. Holloway pointed out that the respondents' main focus was their contention that the law did not apply to their mass mailers, and that they could have settled this case for less money than was the cost then to addressing the legal issues.

Ms. Holloway explained that the case took six months to bring to the Commission because of unavoidable delays.

George Waters, representing the city of Burbank, stated that, to his knowledge, this case was the first instance of charges being made against someone for a mass mailing to other than their own constituent group.

Chairman Getman expressed her concern regarding the legislative history of the statute, noting that it was quite specific in denoting that the mass mailings prohibition applied only to mailings sent within a public official's jurisdiction prior to its amendments.

Mr. Waters stated that the statute cannot mean what it says in a literal sense, and noted that everyone agrees that it does not.

Chairman Getman agreed, but pointed out that, even though it cannot mean what it currently says, it also cannot mean what it said before it was amended.

Mr. Waters noted that the statute changed, and charged that its real meaning is in question. He noted that there has already been a substantial amount of judicial modification to this statute and questioned whether this is another situation where the statute should not apply.

Mr. Waters explained that the city of Burbank has never denied any of the facts of the case, but they assert that the statute was never meant to apply to this type of situation. He stated that in agreeing to the fine, it was not their intent to waive any right to challenge the decision before the Commission and the Court system.

Mr. Waters explained that the Burbank Airport is governed by a joint powers agreement, and has been the subject of a bitter, long standing dispute between the cities of Burbank, on one side, and Glendale and Pasadena on the other side. He stated that each of those cities has one-third of the voting power in the joint powers agreement, and noted that if Burbank wanted to affect the future of the Burbank Airport, they must make overtures to the city council and residents of Glendale and Pasadena.

Mr. Waters asserted that the key to the case is the fact that, at the time the letter was signed, the cities of Burbank, Glendale and Pasadena, and the joint powers agreement were engaged in eight separate pieces of litigation. He added that the Burbank city council members wanted to tell the cities of Glendale and Pasadena that they wanted to meet with the city councils of Glendale and Pasadena to find a way to settle the litigation.

Mr. Waters clarified that if the statute was interpreted literally, the FPPC might not have been able to mail its agenda.

Chairman Getman explained that the statute formerly stated that a mass mailing could not be sent to anyone residing within the jurisdiction of the public official. She pointed out that since that language had been taken out of the statute by amendment, then the amendments specifically intended to prohibit mass mailings to any jurisdiction, not just the jurisdiction of the public official.

Mr. Waters disagreed, noting that a lot of things were changed by the amendment, and were judicially modified because some of those changes were not intended.

Commissioner Deaver noted that this issue deals with a mass mailing for the purpose of influencing people politically, and that he believed that this is the type of mailing that Proposition 73 was specifically aimed at prohibiting.

Commissioner Makel stated that she agreed with the ALJ decision, but noted that the council members were just trying to do their job as city council members, and that part of that job was to try to influence other people politically.

Ms. Holloway noted that it would be difficult to evaluate the content or the intent of the council members, and pointed out that it was irrelevant to the application of the statute. She stated that weighing and balancing those factors would create inconsistencies to the application of the statute. Any other factors that need to be considered, she suggested, should be enumerated in the regulation.

Commissioner Makel agreed, but pointed out that it was a very poorly written statute.

Ms. Holloway stated that the letters could have been sent without signatures.

Mr. Waters agreed, but noted that the council members did not want to send the letters without their signatures because they thought it would be more effective with their signatures. He disagreed with Commissioner Deaver's assertion that the letters were an attempt to influence people politically, but rather, an attempt to educate. He pointed out that if the city council members had not signed the letters, it would not have been illegal, even though it still might be considered an attempt to influence, and he did not believe that the statute intended to prohibit that type of mailing.

Mr. Waters stated that most of the city council's discussions about the airport litigation were done in closed session. The discussions about the airport, he said, were probably done in open session, but he did not represent the city council at that time and could not be certain. The decision to write the letter, he stated, was made during closed session.

Commissioner Swanson argued that it was not appropriate for the city council to decide to write the letter during closed session.

Commissioner Deaver agreed, noting that it could be a violation of the Brown Act, but added that the Commission does not enforce the Brown Act. He observed that everything a politician does is to the politician's advantage, and that the purpose of Proposition 73 was to regulate this sort of mailing.

Chairman Getman stated that the deliberations over this issue would occur during closed session.

Item #28. Litigation Report

General Counsel Kathy Gnekow announced that a lawsuit was received on August 8, 2000, suing each of the FPPC commissioners; Jan Scully, District Attorney of Sacramento on behalf of all California District Attorneys; Sam Jackson, City Attorney of Sacramento; and Bill Lockyer, Attorney General of California, on behalf of all California City Attorneys, and was filed by the California ProLife Council. She reported that the ProLife Council was seeking an injunctive order from a court making a determintion that they are participating in their first amendment rights when they engage in issue advocacy. She added that they are challenging provisions of the Political Reform Act and FPPC regulations that would regulate committees receiving

contributions, as well as challenging that certain committees are determined to be recipient committees making expenditures.

Ms. Gnekow explained that the ProLife Council published mailers and have reporting requirements under the Political Reform Act. They claim, she stated, that they are discussing issues of concern to them, which have to do with euthanasia, abortion and other related matters. She noted that there have been some decisions around the country which give them reason to argue that discussion of these matters is simply engaging in their first amendment rights, and that they should not be required to make reports or be subject to the restrictions of the Act. Ms. Gnekow explained that this had to do with the distinction between express advocacy and issue advocacy.

Ms. Gnekow noted that the only matter set before court is the status conference in January, although a request for preliminary injunction has been filed but has not yet been set for hearing.

Ms. Gnekow reported that evidence was heard and concluded on July 19, 2000 in *California ProLife Council Political Action Committee v. Scully.* She explained that Judge Karlton did not want to hear argument before the November election because Proposition 34, if it passes, may moot many of the Proposition 208 issues. She noted that a status conference has been scheduled for November 15 to discuss the outcome of Proposition 34, and that argument for the case is scheduled for January 23, 2001. The staff briefing will be filed by November 20, 2000, she stated.

Ms. Gnekow reported that the earliest date that the *Griset* case could be scheduled for argument would be for sometime in the fall of 2000.

Ms. Gnekow reported that a court date has been scheduled for August 18, 2000 for *California Strawberry Commission v. Fair Political Practices Commission.* She noted that the parties have filed written arguments and that the matter will be considered before Judge Ford.

Ms. Gnekow reported that a hearing has been scheduled for August 14, 2000 in the *Kao v. Fair Political Practices Commission* case. She stated that Judge Garcia did not want to declare the statute unconstitutional, and just wanted to restrict the judgement to Mr. Kao. The plaintiffs, she noted, had made a motion for partial summary judgement in order to have the judge conclude the matter as it related to Mr. Kao. She explained that the plaintiffs continue to make an argument that any U.S. citizen domiciled abroad should be allowed to make campaign contributions. Ms. Gnekow explained that staff is not opposing the position taken by the plaintiffs.

Ms. Gnekow reported that staff is still waiting to hear from the court to set up dates for the oral argument in *Brown v. Fair Political Practices Commission.*

Item #29. Enforcement Division Litigation Report.

Chairman Getman stated that this report would be taken under submission.

Item #30. Executive Director's Report

Executive Director Wayne Strumpfer added to his report that John Wallace had been hired to become a Senior Commission Counsel in the Legal Division. He noted that John worked for the FPPC from 1988 to 1996 and served as the conflict of interest expert before he left the FPPC and that he would be returning in that capacity, taking over the Phase 2 program.

Item #27. Legislative Report

AB 2720

Staff Counsel/Government Relations Director Mark Kraussepresented language drafted by staff regarding AB 2720, and reported that the author's office stated that they would be willing to entertain the proposed change, but would want to see the language before deciding. Mr. Krausse expressed his concern that the language was outside the scope of the proposed commission. He suggested that a letter be sent to the Journal stating that the commission should consider the "doing business" issue as well. The bill is currently in the Senate Appropriations Committee, Mr. Krausse noted, and he anticipated passage of the bill, but the governor's approval and funding for the proposed commission was in question.

Mr. Krausse stated that staff is still working out the language for the AB 2720 proposed change.

Commissioner Scott left the meeting at 11:28 a.m.

AB 974

Mr. Krausse stated that AB 974, sponsored by the Commission, was signed by the Governor and becomes law on January 1, 2001.

AB 917

Mr. Krausse stated that AB 917 was signed by the Governor and becomes law on January 1, 2001, and would remove the requirement that campaign reports include the payments made to individual petition circulators.

AB 747

Mr. Krausse reported that AB 746, amending the definition of "foreign principal" to exclude U.S. citizens living abroad, passed out of the Legislature August 10, 2000, and will be enrolled to the governor for signature.

SB 2076

Mr. Krausse reported that AB 2076, the Commission sponsored forms simplification bill, is in the Assembly Appropriations Committee, having passed out of the Assembly Elections Committee on August 7, 2000.

SB 1223

Mr. Krausse reported that SB 1223, the Burton measure on campaign reform was passed and signed by the governor. Several parties will be in Superior Court on August 11, 2000, arguing about ballot title and summary information. Any technical corrections to the legislation will take place in January.

Mr. Krausse reported that there may be another bill regarding online reporting, requiring an interactive lobbyist reporting form by April 1, 2001, and may possibly take place within the next two weeks. Other categories of reporting would have to be online by July 1, 2001. Those dates may be adjusted and the bill may or may not make it, but he noted that the Speaker's office is pursuing it.

Commissioner Deaver commended Mr. Krausse on his quick action in drafting language for AB 2720.

Items #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25.

Commissioner Deaver motioned that the following items be approved on consent:

Item #7. ***In the Matter of Andres R. Torres, FPPC No. 2000/192.***
Item #8. ***In the Matter of Theodore Jackson, FPPC No. 99/606.***
Item #9. ***In the Matter of John N. Palmer, FPPC No. 99/413.***
Item #10. ***In the Matter of Mercury General Corporation, FPPC No. 2000/119***
Item #11. ***In the Matter of Robinson, Calcagnie & Robinson, Inc., FPPC No. 2000/402.***
Item #12. ***In the Matter of Silicon Valley Manufacturing Group, FPPC No. 2000/408***
Item #13. ***In the Matter of Walkup, Kelly & Echeverria, FPPC No. 2000/419***
Item #14. ***In the Matter of F. Warren Hellman, FPPC No. 2000/463.***
Item #15. ***In the Matter of Horton Barbaro & Reilly, FPPC No. 2000/475.***
Item #16. ***In the Matter of Berding & Weil, LLP, FPPC No. 2000/500.***
Item #17. ***In the Matter of R. J. Gordon, FPPC No. 2000/398.***
Item #18. ***In the Matter of Maefield Development LLC, FPPC No. 2000/432.***
Item #19. ***In the Matter of BTR, Inc., Jill Lederer, Yes! Remove Elois Zeanah committee, and Linda Tucker, FPPC No. 97/524.***
Item #20. ***In the Matter of International Brotherhood of Electrical Workers Committee on Political Education, Sponsored by International Brotherhood of Electrical Workers, FPPC No. 99/347.***
Item #21. ***In the Matter of California Refuse Removal Council North Political Action Committee, FPPC No. 99/816.***

Item #22. ***In the Matter of Barbara Grimm, FPPC No.99/366.***
Item #23. ***In the Matter of Independent PAC Local 188 International Association of Firefighters and Richard Kalayjian, FPPC No. 97/533.***
Item #24. ***In the Matter of Terry W. Cameron and T.C. Construction Company, Inc., FPPC No. 2000/140.***
Item #25. ***In the Matter of North County Blueprint Company, Inc., FPPC No. 2000/199.***

Commissioner Makel seconded the motion. There being no objection, the motion carried.

Enforcement Chief Cy Rickards commented that the money laundering cases involving the city of Santee were proactive cases initiated by Enforcement staff, and commended Investigator Don McCormick and staff Counsel Deanne Canar for their work on the case.

Commissioner Scott returned to the meeting at 11:25 a.m.

Chairman Getman noted that the dollar information regarding items #11 through 18 was printed on the back of the stipulation.

Chairman Getman adjourned the meeting to closed session at 11:35 a.m. to discuss the following items:

Item #31. Discussion of Pending Litigation (Gov. Code § 11126(e)(1).)

A. ***California ProLife Council Political Action Committee v. Scully*.**
B. ***California Strawberry Commission v. Fair Political Practices Commission.***
C. ***Kao v. Fair Political Practices Commission.***
D. ***Brown v. Fair Political Practices Commission.***
E. Requests to Commence Civil Action Pursuant to Government Code Section 91007.
F. Deliberation of ALJ Proposed Decision*, In the Matter of the City of Burbank, Bill Wiggins, Bob Kramer, Dave Golonski, Ted McConkey, Susan Spanos, and Stacey Murphy.*

Item #32. Discussion of Personnel (Gov. Code § 11126(a)(1).).

The meeting reconvened in open session at 2:10 p.m. Chairman Getman and Commissioners Kathleen Makel and Gordana Swanson were present.

Item #6. In the Matter of the City of Burbank, Bill Wiggins, Bob Kramer, Dave Golonski, Ted McConkey, Susan Spanos, and Stacey Murphy.

Chairman Getman announced that the Commission, by a 5-0 vote, adopted the decision of the Administrative Law Judge, with the following two technical corrections:

1. Corrects a typographical error on page 5, second paragraph from the bottom of the page, the second sentence before the end, changing it to read, **"the affected statute functions**

to reform the political process in several regards which includes, inter alia, not only the prohibition readily acknowledged by respondents, but also the public subsidy of political campaigns by attempting to limit some advantages possessed by incumbents, denying incumbents the advantage of using public funds to place or maintain their names before voters, and conserving limited state revenues from political purposes."

2. Corrects page 7, paragraph Q, respondent's name from "Susan Murphy" to "**Stacey Murphy**."

Item #26. ***In the Matter of James Kennedy, FPPC No. 98/47.***

Staff Counsel Deborah Bain explained that this case involved James Kennedy, a Clear Lake Council member, who participated in an order to approve an abatement proceeding with respect to a piece of property which was located within 300 feet of his residence. She explained that the property in question had been the subject of complaints to the Health Department and the Building Department since 1988, because of the condition of the property. Subsequently, she noted, in July, 1996, the property was tagged as a dangerous building and all of the tenants were asked to vacate the building. Ms. Bain reported that Mr. Kennedy voted to approve a motion to abate the property in August of 1996.

Ms. Bain stated that Mr. Kennedy also participated in a decision regarding another piece of property within 300 feet of his residence, which had been the subject of problems since May, 1989, when the fire marshall determined that the structure was no longer habitable because of fire damage to it. She reported that Mr. Kennedy voted to abate the public nuisance of the property.

Ms. Bain also noted that there were instances of Mr. Kennedy's participation in decisions regarding other properties more than 300 feet from Mr. Kennedy's property, but less than 2,500 feet from his property. She explained that staff could not prove that there was a financial effect to Mr. Kennedy of $10,000 or more in those cases.

Ms. Bain explained that the $1,000 fine recommended by staff considered the fact that Mr. Kennedy had asked city staff whether his property was within the 300 feet, and was told by city staff that his residence was not within 300 feet. She also noted that Mr. Kennedy had no prior enforcement history and that the public harm appeared small.

Chairman Getman expressed her concern that Mr. Kennedy was clearly told that he should not vote on anything within 300 feet of his residence, and that it was Mr. Kennedy's responsibility to determine whether or not the property was within 300 feet of his residence.

Ms. Bain agreed, and stated that the distance was reported to be 286 feet, as reported by Mr.

Kennedy.

Mr. Rickards agreed that Mr. Kennedy should have been more diligent, but noted that it is difficult to make the measurement.

Commissioner Swanson stated that a city engineering department can make that determination, but that it was not possible for Mr. Kennedy to make the measurement.

James Kennedy, Clear Lake City Council member, provided a written statement from Robert S. Chalk, Clear Lake Chief of Police, describing the conditions of the properties in question. Mr. Kennedy agreed that it was his responsibility to measure the property but noted that the properties were difficult to measure. He explained that he checked with the city attorney and the city engineer to ascertain whether his property was within 300 feet of several properties under discussion. Those officials advised him that his property was beyond the 300-foot boundary and that he could participate in the decisions, with the exception of one property, and subsequently he did not participate in the decision related to that property.

Mr. Kennedy noted that he had lived in his home for 35 years and had no intention to sell the home. He explained that the reason he ran for office was to deal with issues regarding abatement cleanup and law enforcement.

Mr. Kennedy stated that the $1,000 fine was too high, and would be difficult for him to pay. He also expressed his concern that the local newspaper in Clear Lake would report the fine as being imposed because he received a personal gain.

Mr. Kennedy explained that, because of this case, he believed that both he and the Clear Lake community had learned a lesson and will be looking more carefully at the regulations in the future.

Commissioner Swanson stated that staff clearly made the right decision in pursuing this case. However, she noted that, because of the history of the properties, the fact that any personal gain on Mr. Kennedy's part would be infinitesimal, and the fact that the properties presented a fire hazard, no fine should be imposed. She agreed that Mr. Kennedy should have abstained from voting, but suggested that a reprimand would be sufficient instead of a fine.

Ms. Bain responded that a warning letter had been discussed, and noted that the subject matter of the vote is not something Enforcement considers as a mitigating factor. She noted that the violations typically result in a $1,700 fine for each violation, and clarified that Enforcement Division could have charged three violations instead of just two. Technically, she stated, it was a violation, and the fine could have been much higher.

Commissioner Makel stated that she shared Commissioner Swanson's concern, and that the fine should be smaller. She suggested a $250.00 fine.

Chairman Getman noted that the Commission has done a lot in the last year to make it easier for

people to hold public office, but explained that the Commission has a responsibility to enforce the law. She explained that the rule is there because, if the property that is the subject of a decision is close to a public official's property, the public official should not participate because there is a personal benefit. She pointed out that someone else could and should have participated, and noted that Mr. Kennedy did personally benefit from the abatement.

Commissioner Makel agreed, but noted that since the motivation for the vote was not for personal gain, and because Mr. Kennedy was told that he could participate by city officials, the fine should be lower.

Mr. Kennedy stated that the votes on the abatements were unanimous. He acknowledged that he had not read the Commission's regulations before running for office, and that his campaign platform included strict abatement action.

Commissioner Swanson stated that staff did everything right, but noted that the Commission's responsibility is to have broader latitude and not impose a fine if it chooses. In this case, she said, a $1,000.00 fine is too much.

Commissioner Makel motioned that the Commission accept a stipulation with a fine of $250.00, if the parties agree. Commissioner Swanson seconded the motion. The motion passed unanimously.

Chairman Getman noted that the September meeting of the Commission will include a discussion of the findings and recommendations of the McPherson Commission, and whether the Political Reform Act is driving good people out of office. She suggested that Mr. Kennedy's case would be a good example for that discussion.

Mr. Kennedy noted that his physical condition is precluding him from running for reelection, and that he intended to be an activist on issues of abatement. He stated that he thought he was treated very fairly by the FPPC, and he commended the Commission for representing the people of Clear Lake in this case.

The meeting adjourned at 2:35.

Dated: September 8, 2000

Respectfully submitted,

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Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman